

EXHIBIT 1

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 -----x
In re: SIPA LIQUIDATION

5
6 BERNARD L. MADOFF INVESTMENT No. 08-01789(BRL)
7 SECURITIES LLC,

(Substantively
Consolidated)

8 Debtor.

9 -----x
10 IRVING H. PICARD, Trustee of the
11 Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff,

Adv. Pro. No.
09-01182(BRL)

12 vs.

13 J. EZRA MERKIN, GABRIEL
CAPITAL, L.P., ARIEL FUND LTD.,
14 ASCOT PARTNERS, L.P., GABRIEL
CAPITAL CORPORATION,

15 Defendants.

16 -----x
17
18 VIDEOTAPED DEPOSITION OF LISA M. COLLURA
19 New York, New York
20 June 18, 2015
21
22

23 Reported by:

24 KATHY S. KLEPFER, RMR, RPR, CRR, CLR

25 JOB NO. 94537

1 LISA M. COLLURA

2 I'm sorry.

3 BY MS. ARCHER:

4 Q. Okay. Because there were no transfers
5 in the BLMIS accounts after December 11, 2008?

6 A. There were no investor-related
7 transfers --

8 Q. Okay.

9 A. -- in the BLMIS bank accounts.

10 Q. But there may have been transfers in
11 some or all of the other bank accounts
12 maintained by the funds, the Merkin Funds,
13 correct?

14 A. Yes, there was activity in those bank
15 accounts.

16 Q. Okay. In connection with forming your
17 opinions and preparing your report in the Merkin
18 matter, putting aside the other Madoff-related
19 matters, generally, what were the documents that
20 you looked at, the categories of documents?

21 A. Specific to this case?

22 Q. Yes.

23 A. Bank records. I looked at -- the
24 Merkin defendants produced QuickBooks records,
25 which was the accounting system. I looked at

1 LISA M. COLLURA

2 other documents and correspondence that was
3 produced by the defendants in the -- in the
4 documents that were produced by the defendants.

5 The bank records that I referenced
6 were the monthly bank statements as well as wire
7 detail that was also provided or produced to the
8 trustee by Morgan Stanley as well as JPMorgan.
9 I think those are the large categories.

10 Q. And you looked at the BLMIS account
11 statements for the funds' accounts, correct?

12 A. Yes, correct.

13 Q. How did you decide what documents to
14 look at?

15 A. I was asked to identify the bank
16 accounts that received money from BLMIS. So
17 step one in that tracing analysis was to do just
18 that, to use BLMIS records as well as bank
19 records produced to the trustee to identify the
20 bank accounts that received money from Madoff.

21 Based on available records, I was -- I
22 identified three bank accounts held by the
23 Merkin Funds that received money from Madoff, so
24 I was interested in looking at all relevant
25 records related to those three bank accounts.

1 LISA M. COLLURA

2 In addition, as part of my analysis of
3 the activity in those accounts and identifying
4 transfers to another defendant in this matter,
5 Gabriel Capital Corporation -- we refer to it as
6 "GCC" for short -- the accounts held by GCC were
7 also relevant to my analysis and, therefore, any
8 records or bank records, monthly bank statements
9 related to GCC was also important in my
10 analysis.

11 Q. Now, am I correct that you understood
12 GCC to be Mr. Merkin's wholly-owned management
13 company?

14 A. I don't know if it was -- I don't know
15 the -- I don't quite understand the complete
16 ownership, but I understand that it was the
17 management company for the funds.

18 Q. So you were not aware that Mr. Merkin
19 owned that company?

20 A. It wasn't really relevant to my
21 analysis, so I -- yes, I mean, I think I
22 under- -- I don't remember understanding that or
23 even thinking about the ownership of GCC.

24 Q. Directing you to paragraph 45 in your
25 report, it's on page 15, the second sentence

1 LISA M. COLLURA

2 A. Correct.

3 Q. What about restated LIBR, when was --
4 were you familiar with that term and methodology
5 before your work on this matter?

6 A. No, I was not.

7 Q. Had you ever heard the term "restated
8 LIBR"?

9 A. No.

10 Q. I'm going to direct your attention to
11 paragraph 96 in your report. It starts on page
12 34.

13 In the second sentence of that
14 paragraph, you state, "I have assumed that the
15 BLMIS funds are equivalent to the trust or
16 secured funds referred to in my explanation of
17 LIBR above."

18 Can you tell me why you made that
19 assumption?

20 A. My understanding is that LIBR is a
21 method that's used to determine who has rights
22 to the balance in an account, or in my -- an
23 example of that is to -- for a trust fund, for
24 example, or if there's secured parties that have
25 certain rights to funds, and my understanding of

1 LISA M. COLLURA

2 LIBR is that's one method that can be applied to
3 the activity in a bank account to really come to
4 the conclusion as to who has rights to the
5 balance in an account. And in that example,
6 trust funds, for example, those are the funds
7 that -- that one might be tracing using LIBR to
8 come to that conclusion.

9 So, in this case, even though we're
10 applying -- I was applying LIBR for a slightly
11 different purpose than to figure out who has
12 rights to the ending balance in the account, the
13 BLMIS funds are the ones -- are the funds that
14 were the focus of the tracing, and therefore,
15 they were equivalent to my description of LIBR
16 using the trust funds or the secured funds in
17 paragraph 95 above.

18 Q. Turning over to page 36 in your
19 report, under Restated Tracing Rules, you state
20 at the beginning of paragraph 101, "Counsel to
21 the trustee has advised me that certain rules
22 regarding tracing of funds through a commingled
23 bank account were restated in 2011."

24 Where were they restated or by whom?

25 A. It was -- in Exhibit 2, I have

1 LISA M. COLLURA

2 transcript before you drafted your report?

3 A. No, I think I started -- I think the
4 deposition happened in 2014, October 2014, and I
5 start drafting my report before that.

6 Q. Did you review Mr. Autera's deposition
7 before you finalized your report?

8 A. Yes.

9 Q. Did you review any portions of Mr.
10 Autera's deposition for the first time after
11 finalizing your report?

12 A. No, I reviewed the whole deposition
13 transcript before finalizing my report.

14 Q. Directing you to paragraph 61 of your
15 report, page 20, you say at the end of that
16 paragraph, "I then used the Merkin defendants
17 QuickBooks records to identify the purpose of
18 each transfer, whenever possible."

19 Do you see that?

20 A. Yes.

21 Q. How -- why did you identify the
22 purpose of the transactions?

23 A. Well, specific to -- right,
24 commingling. Specific to commingling, one
25 reason was because in the GCC bank accounts I

1 LISA M. COLLURA

2 understood, and I did see, transfers between GCC
3 and the fund accounts -- and by "fund accounts"
4 I mean, Ariel, Gabriel, and Ascot Partners --
5 bank accounts at Morgan Stanley, that
6 represented reimbursement of expenses or fees,
7 and my understanding of GCC's role as a manager
8 of those funds was that that -- those
9 transactions would take place on a regular basis
10 or that that was something that happened on a --
11 on a regular basis.

12 So, for purposes of my commingling
13 analysis, I excluded those transactions, and so
14 that was one reason why I had to identify the
15 purpose of each transfer.

16 Q. So you excluded the transactions that
17 you were able to identify as a reimbursement of
18 expenses or fees, correct?

19 A. I don't know if it was always a
20 reimbursement, but if it was a transaction that
21 was related to fees or payment of expenses, I
22 excluded those from my -- from my -- the totals
23 that I have identified as commingling in the GCC
24 bank accounts.

25 Q. So those amounts would not be included

1 LISA M. COLLURA

2 commingling?

3 A. No, they were not.

4 Q. When you were attempting to quantify
5 the amount of subsequent transfers, is it
6 correct that the transfers related to fees and
7 operating expenses were not excluded?

8 A. Correct, they were not excluded.

9 Q. Were any transfers excluded? Were any
10 categories excluded based on your analysis of
11 the QuickBooks or the purpose of a transaction?

12 A. No, they were not.

13 Q. Other than looking at the QuickBooks,
14 did you try to identify from any other source
15 the purpose of any of the transfers that you
16 were reviewing?

17 A. I think the description on the bank
18 statement sometimes may have indicated if it was
19 related to an investor contribution or
20 distribution, for example. For the most part,
21 the descriptions on the Morgan Stanley bank
22 statements were not that useful. They were very
23 generic, "funds paid" or "funds transferred,"
24 but sometimes -- I think if I'm remembering
25 right, it was in the earlier periods where the

1 LISA M. COLLURA

2 descriptions were a little bit better than maybe
3 the later years. I don't know if that was a
4 change that Morgan Stanley made in terms of how
5 much description they put on their -- the
6 monthly bank statements.

7 The other source was the -- the wire
8 detail that was provided by Morgan Stanley.
9 That information was useful and helpful to me to
10 identify transfers, where the transfers were
11 going and where they were coming from. I would
12 say it wasn't necessarily helpful in determining
13 the purpose of a transaction.

14 Q. Other than determining which
15 transactions might have constituted a
16 reimbursement of fees or expenses, would the
17 purpose of a transaction have impacted your
18 opinions or your calculations?

19 MR. SONG: Object to the form.

20 A. No.

21 Q. Did you review or analyze any capital
22 activity reports or summaries in connection with
23 your preparing your report?

24 A. There were a number of schedules
25 referred to as Capital Summaries or Capital -- I

1 LISA M. COLLURA

2 think that the ones that I used in my
3 reconciliation were called Capital Allocation --
4 sorry. I think I have it in my report. They
5 were Capital Allocation Summaries. It's
6 somewhere in my -- in my report.

7 But were you specifically asking about
8 capital activity?

9 Q. Well, why don't we talk about the --
10 what you have referred to as the Capital
11 Allocation Reports or Summaries. What was your
12 understanding of what those represented?

13 A. Those I used in my reconciliation
14 because they reflected activity in the Madoff
15 accounts. So, in other words, it would show
16 whether it was a quarterly basis, or maybe some
17 of them might have been annual, the total
18 withdrawals in a certain period or the total
19 deposits, and those -- those documents I used to
20 reconcile to the transactions that I saw on the
21 customer statements for the Merkin accounts.

22 Q. The Capital Allocation Reports that
23 you reviewed, what was your understanding of who
24 drafted those? Did you have an understanding of
25 who drafted those?

1 LISA M. COLLURA

2 Q. Did you reach any conclusions about
3 the relationship between transfers from BLMIS to
4 Ascot Partners and redemption requests by Ascot
5 Partners investors?

6 A. There were redemption requests that
7 were identified as subsequent transfers as part
8 of my application of the five methods. Some of
9 the transfers out of Ascot Partners to investors
10 were identified as subsequent transfers of BLMIS
11 funds.

12 Q. Did you have the ability to analyze
13 the timing of the subsequent transfers to
14 investors for redemption purposes as compared to
15 the initial date of the transfer from BLMIS to
16 Ascot Partners?

17 A. Can you clarify what you mean by did I
18 have the ability to?

19 Q. Did -- in looking at the bank
20 statements or the other documents that you
21 reviewed, were you able to tell the time lag
22 between amounts that were transferred from BLMIS
23 to Ascot Partners and then subsequent transfers
24 that you identify from Ascot Partners to various
25 investors?

1 LISA M. COLLURA

2 A. The way that we organized the Ascot
3 Partners' bank account activity that we obtained
4 from the bank statements, the monthly bank
5 statements, was in chronological order, and
6 within that, the one assumption that I needed to
7 make was transactions that happened on the same
8 day because they -- within a day, we needed
9 to -- we needed to put them in some order for
10 purposes of applying the tracing methods.

11 So within that day, we -- we used the
12 sort order as it appeared on the bank statements
13 because there were no time stamps on the bank
14 statements; so that was the most logical
15 approach to say, well, what order did the
16 transactions happen.

17 So that's all laid out in my Exhibit
18 12, which is just the list of transactions in
19 the Ascot Partners bank account from December
20 2003 forward in the order that we analyzed them.
21 So that exhibit would reflect where you see
22 money coming in from Madoff and then other
23 disbursements that many of which went to
24 investors of Ascot Partners, but some went to
25 GCC, some went to Ariel, some went to Gabriel.

1 LISA M. COLLURA

2 So that's all laid out in the results of my
3 subsequent transfer analysis.

4 Q. And it is the case that, at least in
5 some cases of initial transfers from BLMIS to
6 Ascot Partners, you were able to see subsequent
7 transfers for redemption purposes to Ascot
8 Partners' investors, correct?

9 A. Yes, some of the subsequent transfers
10 were to investors.

11 Q. They were close in time?

12 A. They were close in time, but it -- it
13 all was based on the application of the tracing
14 method. So just because they were close in
15 time, it depended on which tracing method we
16 were applying if the -- if that particular
17 transfer to an investor would have been
18 identified as a subsequent transfer of BLMIS
19 funds.

20 Q. So the fact that a subsequent transfer
21 might have been close in time to the initial
22 transfer didn't necessarily impact your opinion
23 as to the propriety of the tracing methods?

24 A. Correct.

25 MR. SONG: Object. Objection to the

J U R A T

I, Lisa Collura, do hereby certify under
penalty of perjury that I have read the foregoing
transcript of my deposition taken on June 18, 2015;
that I have made such corrections as appear noted
herein in ink, initialed by me; that my testimony as
contained herein, as corrected, is true and correct.

DATED this 24 day of August, 2015,
at FTI Consulting New York, New York.

Lisa M Collura

SIGNATURE OF WITNESS